



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

In reply, refer to WTR-5

January 28, 2011

Mr. Dale Bowyer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland CA 9612

RE: Bay Area Municipal Regional Stormwater Permit- Special Projects Proposal/LID  
Treatment Reduction Credits Provision

Dear Mr. Bowyer:

Thank you for the opportunity to comment on the permittees' proposal for Treatment Reduction Credits for Special Projects in accordance with the Municipal Regional Stormwater Permit (MRP) provisions at C.3.e.ii.

EPA does not believe the permittees' proposal satisfies the permit requirements nor does it meet the intent of the permit language. EPA understands the concept envisioned by this provision is that "LID treatment reduction credits" would be developed by the permittees for certain types of projects where LID practices may be infeasible or where LID practices may create disincentive for smart growth, high density, and transit oriented development. EPA is generally supportive of incentivizing smart growth projects like infill development, brownfields redevelopment, or transit-oriented development. This concept has been utilized in other MS4 permits with EPA's support. For example, the Phase II MS4 permit issued by the State of West Virginia allows certain types of projects (e.g. high density development) to reduce the required runoff reduction standard by 20% for each smart-growth technique utilized, up to a maximum 75% reduction credit where multiple incentives apply at the same project.

In contrast, the MRP permittees' proposal simply exempts all special projects from the LID requirements of the MRP and does not propose "LID treatment reduction credits" as required by the permit language. In lieu of meeting the LID requirements, these projects would only be required to implement stormwater treat and release techniques.

The proposed special projects categories are overly expansive and as such could incorporate a large segment of Bay Area development. Project Categories D and E do not constitute smart growth, high density or transit oriented development as described by the "Special Projects" provisions in section C.3.e.ii. of the MRP. Project Category D, which is incorrectly referred to as "retrofitting," constitutes redevelopment activity that should not be eligible for LID treatment reduction credits. Similarly the proposal does not make a convincing argument that Street Widening described in Project Category E should not be eligible for these

credits. Additionally, the descriptions of the remaining Project Categories should be refined to include more specific definitions and exclude projects which are not smart growth oriented. For example, "Project Category B – Maximum Two Acres-High Density" would appear to exempt a proposed greenfields development of a two story big-box retail store with underground (or off-site) parking.

EPA recommends that you reject the proposal. If a reasonable credit system cannot be developed by the permittees, the MRP can be implemented without the use of credits for special projects. EPA notes that the MRP already allows Alternative or In-Lieu Compliance (Section C.3.e of the MRP) for situations where project-specific conditions make it infeasible to implement LID requirements at a project site. Implementation of the MRP without credits would be consistent with other recently renewed California MS4 permits.

#### Specific comments:

Page 1 - The last sentence of the first paragraph is misleading and should be revised to the following: "Alternatively, New Development and Redevelopment projects may comply by using these LID treatment measures on a portion of the runoff onsite, and building or paying for a parallel project using LID measures at another site." The reference to footnote 1 would therefore not be necessary.

Page 1 - There is no basis provided for the conclusion that "nearly all" of the planned projects are in areas with low-permeability soils. Determination of the feasibility of using LID at project sites must be made based on site specific determinations rather than overly broad generalizations like this one.

Page 1 - There is little basis provided for the conclusion that the permit's prescribed methods of compliance typically require "significant space," "increase project complexity," or that they "introduce additional uncertainty regarding development permit approvals, project financing, and insurance."

Page 2 - Again, as suggested in the first comment, the misleading last sentence of the first paragraph on this page, stating that projects would "not be built" should be replaced by language reflecting the alternative compliance option offered by the MRP.

Page 3 - re: the definition of transit hub, it's unclear what is meant by "bus transfer station served by 3 or more bus routes." It seems that this could be interpreted that any location within 1/2 mile of a bus stop served by 3 or more bus lines meets the definition. Instead, suggest removing this, and revising the definition to "a bus, rail, light rail, or commuter rail station..."

Page 3 – As noted above, Project Category D – "Retrofitting of Existing Development" does

not constitute smart growth, high density, or transit-oriented development and should not be eligible for reduction credits. The description "retrofit of existing development" is misleading. It is incorrect to state that provisions of section C.3 of the permit apply to property that is "not being developed or redeveloped." The specific MRP language cited (see page 11 of the proposal) refers to certain "redevelopment projects" where there is alteration of over 50% of a project's impervious surface. These provisions apply to redevelopment projects, not retrofit projects. Unlike a few other recently renewed permits (e.g. RB9's South Orange County permit) the MRP does not have true retrofit provisions.

Page 3 – As noted above Project Category E - Street widening does not constitute smart growth, high density, or transit-oriented development and should not be eligible for reduction credits. This category should be removed.

Page 7 section 2 - The basis for concluding that these projects should not be required to implement LID are not supported by this section. It's noted that none of the LID options "can be counted on to be feasible in every case." However there is also discussion of infiltration, green roofs, water capture/use, and biofiltration noting that each of these techniques are implementable at some projects, but not at all projects. This supports the opposite conclusion from the one reached by the permittees. Since all of these LID techniques can be implemented at some sites, there should be an evaluation of each project site to determine site specific feasibility. Where the use of the full toolbox of all available LID techniques cannot feasibly address the required stormwater runoff volume, the MRP's Alternative Compliance provisions can be utilized to achieve permit compliance.

P 9. There does not appear to be a basis for the statement that 1 acre lot-line to lot-line development projects within central business districts are "typically financially marginal". While the document raises real issues regarding the potential complexity, cost, and limitations of LID in dense urban infill areas, it is not clear that costs associated with stormwater management rises to the level of "critical financial viability".

Page 12 - Note that the use of permeable pavement by many cities (e.g. Santa Monica) is a way to utilize LID in Project Category E.

We appreciate the opportunity to provide comments on the implementation provisions of the MRP. Please feel free to contact me at (415) 972-3464 if you would like to discuss these comments.

Sincerely,

*Elizabeth Salazar*

*for*

David W Smith, Manager  
NPDES Permits Office